

### **REMARKS**

This responds to the Office Action dated March 4, 2009.

Claims 1, 4-5, 9-10 and 17 are hereby amended. No claims are hereby canceled. No new claims are hereby added. As a result, claims 1-17 are now pending in this application.

#### **§ 103 Rejection of the Claims**

Claims 1-6, 9-14 and 17 were rejected under 35 U.S.C. § 103(a) as being obvious over Russ et al. (U.S. Patent Application Publication No. 2004/0049790, hereinafter referred to as the Russ reference) in view of Su (U.S. Patent Application Publication No. 2002/0199190, hereinafter referred to as the Su reference).

Claims 7, 8, 15 and 16 were rejected under 35 U.S.C. § 103(a) as being obvious over Russ et al. (U.S. Patent Application Publication No. 2004/0049790, hereinafter referred to as the Russ reference) in view of Su (U.S. Patent Application Publication No. 2002/0199190, hereinafter referred to as the Su reference) as applied to claim 6 above, and in further view of Standridge et al. (U.S. Patent No. 6,618,353, hereinafter referred to as the Standridge reference).

The Applicant has carefully considered the Examiner's rejection and have amended the claims to clarify a patentable distinction between the claimed invention and the cited references. The Applicant submits that the cited references, alone or in any combination, fail to teach or suggest all of the presently claimed elements.

#### **The Russ Reference**

The primary reference cited by the Examiner is the Russ reference. The Russ reference describes a method of having a primary digital home communication terminal (referred to as a "primary DHCT" or as a "gateway device 500") that is connected to a communications network provide access to carousel objects to a secondary (or remote) DHCT that is not directly connected to the communications network. The carousel objects may include data and software that are broadcast repeatedly. An example of a carousel object is a data object that allows a

DHCT to provide an interactive programming guide (IPG) to a user. (Russ paragraphs [0004], [0014], and [0015]) In the system of the Russ reference, the primary DHCT (or gateway device 500) provides the secondary (or remote) DHCT with an index of carousel objects thereby allowing the (or remote) secondary DHCT to request any desired carousel objects presented in the index of carousel objects. Upon receiving a request for a carousel object, the primary DHCT (or gateway device 500) then forwards the requested carousel objects to the secondary (or remote) DHCT such that the secondary (or remote) DHCT may use the requested carousel objects. (Russ paragraphs [0016] and [0033].)

Claim 1, as presently amended, recites, in pertinent part:

using said application streamer to create a file directory structure based on a priority for each file in the file directory structure, the priority for each file determined using information about each file present in said textual data and said file directory structure comprising at least one data file and at least one graphical data file formatted by the application streamer to be compatible with the set-top box;  
(emphasis added)

Support for this amended claim can be found in the Summary of the Invention section, and the first paragraph on page 9 of the original written specification. Applicant respectfully asserts that Russ in view of Su fails to teach or suggest creating “a file directory structure based on a priority for each file in the file directory structure, the priority for each file determined using information about each file present in said textual data.”

The Office Action alleges that the limitation formerly recited in claim 1 of “using said application streamer to create a file directory structure based on said textual data, said file directory structure comprising at least one data file and at least one graphical data file ...” is disclosed by Russ figure 4 and paragraphs [0028]-[0030]. Applicant respectfully disagrees, however, Applicant has amended claim 1 in order to more clearly point out the difference between what is claimed and the prior art.

Russ paragraphs [0028]-[0030] recite:

[0028] **FIG. 4** is a flow chart illustrating a data carousel method 400 in accordance with one possible embodiment of the invention, among others. When a content server wishes to broadcast data via the communications network 130, the content server initially registers (block 401) with the BCS server 106. The BCS server 106 then creates a hierarchical file system (block 402) with all

respective data available from each content server that is registered with the BCS server 106.

[0029] The BCS server 106 may start with a home directory such as, for example, "/BCS/", and each content server that has registered with the BCS server 106 may be assigned a respective directory in this hierarchical file system. For example, if the first content server 102 and the second content server 104 register with the BCS server 106, then, a first directory "/BCS/first content server" under the home directory "/BCS/" may be created for the first content server 102, and a second directory "/BCS/second content server" under the home directory "/BCS/" may be created for the second content server 104.

[0030] The first content server 102 and the second content server 104 may also create subdirectories under their respective directories. For example, the first content server may create a subdirectory "/BCS/first content server/first subdirectory/." Additionally, a content server may create and maintain a file under the respective directory for that server. For example, the first content server 102 may create a file under its respective directory (e.g., "/BCS/first content server/first file") or under a subdirectory (e.g., "/BCS/first content server/first subdirectory/first file").

The cited passage of the Russ reference discusses the creation of a "hierarchical file system." (See block 402 in **Figure 4**.) However, the system of the Russ reference creates a hierarchical file structure in a different manner than as claimed in the amended claims. Specifically, in the system of the Russ reference "each content server that has registered with the BCS server 106 may be assigned a respective directory in this hierarchical file system." Thus, this "hierarchical file system" is structured based on the content servers registered with the BCS server 106, where each content server gets a directory and data available from each content server is placed within that directory. This hierarchical file system allows the BCS server 106 in the Russ reference to create a directory index of all data available from the plurality of servers wishing to broadcast such data. The system of the Russ reference then transmits this directory index to the gateway device/primary DHCT. (Russ [0033]) Thus, the system of the Russ reference is very different from the presently claimed invention since it does not disclose a "file directory structure based on a priority for each file in the file directory structure, the priority for each file determined using said textual data" as recited in claim 1.

At most, the Russ reference discloses a hierarchical file system based on the source of data (each content server gets its own directory) while the directory structure recited in claim 1 is

based on a priority of a file. The priority itself is determined based on information about each file that is present in the received textual data. This difference between merely creating a hierarchical file system based on the source data (each content server gets its own directory in the Russ reference) and creating a file directory structure based on a priority system wherein the priority of each file is determined using the contents of textual data is significant. This difference is highlighted by later limitation in the amended claims. Specifically, the file structure is then translated into a node tree wherein each node has a corresponding priority and that corresponding priority is used to allocate bandwidth for transmission.

As such, the Office Action fails to show that the Russ reference in view of the Su reference teaches or suggests every element of claim 1. Therefore, Applicant respectfully submits that there are substantial differences between what is claimed and what is disclosed in the Russ reference in view of the Su reference. Those differences are significant and non-obvious to a person of ordinary skill in the art at the time the application was filed. Thus, claim 1 is not rendered obvious by Russ in view of Su. Independent claim 9 recites similar limitations as claim 1 and therefore should be allowable for at least the reasons presented above and Applicant respectfully requests notification of the same.

Claims 2-8 and 10-16 all depend from independent claims 1 and 9 and incorporate all elements therein. Accordingly, claims 2-8 and 10-16 are allowable for at least the reasons presented above and Applicant respectfully requests notification of the same.

Further, Applicant asserts that the additional elements of claims 2-8 and 10-16 further distinguish Russ in view of Su, and Applicant reserves the right to present arguments to this effect at a later date.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (408) 278-4058 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 20 day of March, 2009.

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